HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No. 17394 of 2006

Date 7-9-2007

Between:
V. Dhananjaya Das

.....

PETITIONER
AND

The Secretary (Rep. UOI),
Railways Board, Ministry of Railways,
New Delhi and others.

.....RESPONDENTS

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE SRI JUSTICE G. CHANDRAIAH

WRIT PETITION No.17394 of 2006

ORDER: (per Smt. T.Meena Kumari,J)

In this writ petition, the petitioner seeks for a Writ of Certiorari to call for the records relating to the order of the Tribunal made in O.A. No. 383 of 2006, dated 18.7.2006 and to set aside the same.

The brief facts of he case are that the petitioner herein joined the Railways as Temporary Apprentice-ABRI in the year 1966. While so, the petitioner met with an accident in the year 1969, due to which, his right leg got amputated below the knee. As a result, he was on sick leave till 30.11.1970, i.e. nearly for a period of eighteen months. Though the petitioner was fit to discharge the duties of ABRI, he was posted as Chargeman equivalent to the post of ABRI Grade-II in the bridge workshop, Secunderabad. Even though the applicant joined the workshop on 30.1.1970, he was taken as an apprentice mechanic in the Civil Engineering and was asked to undergo rest of the training for 28 months as he could not complete the full training in the open line. Thereafter, the respondents fixed the seniority of the petitioner as Chargeman in the combined cadre as 30.7.1973. The grievance of the petitioner is that even though the petitioner has completed the full training on 4.10.1971, the respondents took him as Chargeman only on 30.3.1973, as a result, he lost seniority in the category of Chargeman in the workshop and BRI in the open line cadre. Though he submitted several representations in that regard, the respondents have not taken any action. Further in the year 1992, whe selections

were held to the post of Assistant Engineer, the seniority of the petitioner was lowered down. He further submitted that had he been promoted as ABRI Chargeman with effect from 4.10.171 ad further promoted as Bridge Inspector Grade-II, with effect from 31.3.1981, he would have been in the zone of consideration for appearing for the selections held in the year 1992. He, therefore, filed O.A. No. 383 of 2006 before the Central Administrative Tribunal assailing the inaction on the part of the respondents in not including his name for the selection that was held for being promoted to the post of Assistant Engineers and promote the petitioner as Assistant Engineer on par with his juniors with all consequential benefits that would flow from out of such direction. The Tribunal, by the order impugned in this writ petition, dismissed the O.A. as time barred. Aggrieved, the petitioner filed the present writ petition.

Leaned counsel for the petitioner has filed an additional affidavit before this Court wherein he sought to explain the delay of nearly fourteen years for not approaching the judicial fora. He further submitted that as the petitioner in the initial stages of employment has met with an accident, lost is right leg and thereafter he went into a shell with least interaction with anyone in the society and was bed ridden for almost 18 months. Subsequently, when he rejoined duty, he was taken as an apprentice mechanic in the Civil Engineering and was asked to undergo rest of the training for 28 months as he could not complete the full training in the open line. Thereafter, the seniority of the petitioner was lowered down. Further, when his name was not included in the selection list for promotion to the post of Assistant Engineer he was employed further submitted that the Tribunal ought not to have dismissed the O.A. on technicalities. He, therefore, prayed that the writ petition be allowed and the impugned ode be set aside.

In the counter affidavit filed by the respondents, though the respondents have not denied the accident and the amputation of the

right leg of the petitioner, they however stated that on completion of training for 22 months, the petitioner was appointed as Chargeman-C and the petitioner also joined in the post on 30.3.1973, without any demur. The petitioner's seniority was accordingly fixed. Subsequently, the petitioner was promoted as Deputy Shop Superintendent on 4.12.1990 pending finalisation of selection and on being empanelled, he was regularly appointed as such with effect from 16.6.1992. Thereafter, his seniority position as Deputy Shop Superintendent was accordingly included in the integrated seniority list for the purpose of selection to the post of Assistant Engineer, Group B on 27.10.1993, which was also circulated to the petitioner. They further asserted that the petitioner at no point of time had submitted any representation in respect of his promotion nor with regard to his seniority in those categories. Further, the integrated seniority list circulated vide proceedings dated 27.10.1993 was also not disputed by the petitioner ad there was no representation whatsoever submitted by the petitioner in that regard. They further stated that as per the seniority ranking was assigned in the integrated seniority list and the petitioner had not come up within the zone of consideration when selections were held to the post of Assistant Engineer in the year 1992. Though, he came up within the zone of consideration in the years 1998 and 2001, however, he could not be promoted as he failed to qualify in the written examination. Subsequently, the petitioner got selected in the year 2004 and accordingly he was empanelled as Asst. Engineer and was posted as Assistant Executive Engineer/General, Constructions on 29.4.2005 and he is working as such. They quite categorically stated that the petitioner had never agitated for non-inclusion of his name in the selections, which were held in the years 1992 and 1994.

So far as the disability suffered by the petitioner is concerned, it is stated that in view of the fact that the petitioner was not in regular service in the year 1991, he was not entitled to the benefits under the

Disabilities(Equal opportunities protection of rights and full participation) Act. However, they appointed him as Apprentice mechanic in the same grade and pay and on completion of apprenticeship he was absorbed as Chargeman-C in Engineering workshop, Lallaguda.

Heard the learned counsel for the petitioner and perused the averments made in the counter affidavit.

Admittedly, the petitioner was promoted as Deputy Shop superintendent on 16.6.1992 consequent upon the bifurcation of Chargeman and BRI cadres. The petitioner having accepted the said position without any demur, cannot now contend that his name has not been included in the selections which were held in the year 1992 and 1994. If really the petitioner was diligent enough and aggrieved of the non-inclusion of his name in the panel of Assistant Engineers in the year 1992, he ought to have challenged the same within a reasonable time and he cannot assail the same at this distance of time. The Tribunal, therefore, taking all these aspects into consideration, rightly dismissed the O.A. as time barred. In the circumstances, we are not inclined to interfere with the order of the Tribunal.

The writ petition fails and the same is accordingly dismissed. No costs.

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(T. MEENA KUMARI,J)

Date:7th September,2007

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(G. CHANDRAIAH,J)

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